

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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APR 5 2001

In the Matter Of)

Revision of the Commission's Rules To)
To Ensure Compatibility with Enhanced)
911 Emergency Calling Systems)
Systems)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 94-102

PETITION FOR CLARIFICATION AND/OR DECLARATORY RULING

I. Introduction

The City of Richardson, Texas ("Richardson"), pursuant to Sections 1.2 and 1.41 of the Commission's Rules, 47 C.F.R. §§ 1.2, 1.41, hereby petitions for clarification and/or a declaratory ruling that a Public Safety Answering Point ("PSAP") makes a valid request to a wireless carrier for Phase II enhanced 911 ("E911") service by informing the carrier that its equipment upgrades for Phase II service will be finalized prior to delivery of the service by the carrier, that the PSAP has an adequate cost recovery mechanism in place to bring its equipment to the level necessary to receive Phase II data, and that the carrier is required to deliver Phase II service within six months after receiving such a request or by October 1, 2001, whichever is later, so that the service is available to the PSAP when its equipment upgrades are completed.

Richardson made such a request to VoiceStream Wireless ("VoiceStream") on March 20, 2000. (See, March 20, 2000 letter from Capt. Joe Hanna, Richardson Police Dept. to Jim Blundell, VoiceStream Wireless, attached hereto as Exhibit "A"). However, VoiceStream responded initially by not addressing the request because it was "reviewing the issues" and subsequently by informing Richardson that its request was not "valid" and "does not satisfy the FCC prerequisites" because Richardson's equipment "is not currently capable of receiving and using the Phase II data," even though Richardson had assured VoiceStream in its request that Richardson's equipment upgrades "will be finalized prior to the delivery of (Phase II) service by VoiceStream Wireless." (See, April 18, 2000 letter from James A. Nixon, VoiceStream Wireless

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to Capt. Joe Hanna, attached hereto as Exhibit "B").

Apparently, VoiceStream believes that it has no obligation under the FCC's mandates to make E911 service available to a PSAP until the PSAP has informed VoiceStream that the PSAP has completed all of its equipment upgrades, even if the PSAP assures VoiceStream that it will have the upgrades completed prior to VoiceStream's delivery of Phase II service. In fact, VoiceStream believes that it is not required even to start taking the steps necessary to bring Phase II service to a PSAP until the PSAP has finished all of its equipment upgrades. VoiceStream's interpretation of the Commission's rules in this regard may well be shared by other wireless carriers.

VoiceStream's interpretation, if permitted to stand, will needlessly delay the initiation of Phase II service and will harm the public. The Commission has clearly stated that it wants to "avoid potential delays in the provision of vital Phase II services." In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Second Memorandum Opinion and Order, 14 FCC Rcd 20850, 20852 (1999) ("Second MO&O"). Under VoiceStream's interpretation, a carrier is not required to do anything to bring Phase II service to a PSAP during the entire time that the PSAP is completing its upgrades; the carrier can sit back and wait for the upgrades to be completed. Then, once the PSAP finishes its upgrades, Phase II service will be delayed while the PSAP has to wait for the carrier to perform all of the work necessary to bring the service to the PSAP - - work which could have been done at the same time that the PSAP was finishing its upgrades. This wasteful two-step process will cause unwarranted delays, and thus violates the Commission's central precept, namely: "(a)ny unnecessary delay in deployment and effective, universal operation of E911 is undesirable." *Id.* at 20854.

To avoid these delays, it should be clarified that a request for Phase II service from a PSAP which represents that the PSAP will have the upgrades completed by the time the carrier delivers the service and that the PSAP has an adequate cost recovery mechanism in place, the type of request which Richardson made, is a valid request and, thus, triggers the carrier's

obligation to deliver the service to the PSAP. It should be made clear that a wireless carrier is required to perform the work necessary to bring Phase II service to a PSAP at the same time that the PSAP is completing its upgrades, provided that the PSAP represents to the carrier that it will have the upgrades completed by the time the carrier is able to deliver the service.

Such a clarification will ensure that Phase II service is available to the PSAP when the PSAP is first ready to use the data. Thus, this clarification will further the public interest and will foster the Commission's goal in adopting the E911 rules: "to ensure that CMRS licensees developed the capabilities to achieve enhanced transmission of 911 calls and respond promptly when localities request service." *Id.* at 20854.

II. Background

On March 20, 2000, Richardson wrote to VoiceStream requesting both Phase I and Phase II service. (See, Exhibit "A"). The request noted that Richardson expected that its request for Phase I services would be completed no later than six months from the date of the request, and that Richardson was aware of the October 1, 2001 deadline for the provisioning of Phase II services. *Id.* The request went on to state as follows:

In accordance with the provisions of Docket 94-102, the City of Richardson has taken steps (to) ensure that our customer premise equipment is capable of receiving data in accordance with Phase I requirements. The City of Richardson further advises that it has an adequate cost recovery mechanism in place to bring our customer premise equipment to the level necessary to receive Phase II data. The City of Richardson's Phase II customer premise equipment upgrades will be finalized prior to delivery of this service by VoiceStream Wireless.

Exhibit "A."

VoiceStream acknowledged receipt of the letter from Richardson containing the request for Phase I service, but made no mention of the request in the same letter for Phase II service. As a result, on April 8, 2000, Richardson wrote again to VoiceStream, stating that Richardson was unsure whether VoiceStream's failure to acknowledge the request for Phase II service "was an oversight or whether there is an issue with this request." Exhibit "C."

On April 18, 2000, VoiceStream responded to Richardson with a letter stating that it had

not addressed the Phase II portion of Richardson's request because VoiceStream "was reviewing the issues," and VoiceStream noted that in light of its "responsibility to protect (its) investors' interests," it needs "to carefully validate wireless E9-1-1 requests before accepting them and establishing any service delivery deadlines." Exhibit "B." VoiceStream wrote that it appeared that Richardson's request "did not satisfy the FCC's prerequisites" because Richardson's equipment "is not currently capable of receiving and using the Phase II data." *Id.* Thus, VoiceStream stated that "we do not believe that a valid Phase II request can be made at this time." *Id.*

**III. It Should Be Clarified And/Or Declared That A Request for
Phase II Service Stating That the PSAP Has A Cost Recovery
Mechanism In Place And Will Have Its Equipment Upgrades
Finalized By The Time Phase II Service Is Delivered Is A Valid Request**

In the Second MO&O, the Commission did not specifically address whether a PSAP request is valid when a PSAP represents to a wireless carrier that it will have its equipment upgrades finalized by the time Phase II service is delivered to the PSAP. However, the Commission did reiterate more than once the requirement that carriers respond "promptly" when PSAPs request service. Second MO&O, 14 FCC Rcd at 20854. The Commission, in addressing PSAP requests, also wrote as follows:

Accordingly, before a carrier is required to provide E911 services pursuant to a PSAP request, the PSAP must have the means of covering its costs of receiving and utilizing the E911 information to ensure that the request is valid. As modified, the carrier's E911 service obligation is triggered when the carrier receives a valid request from a PSAP that is capable of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the PSAP's cost of the E911 service is in place. We do not mandate any specific State action nor do we define the nature and extent of any funding mechanism or other approach that may achieve the necessary technology and service capabilities that enable the PSAP to make a valid service request.

Second MO&O, 14 FCC Rcd at 20853.

Accordingly, under the Second MO&O, a request from a PSAP which has the means of

covering its costs of receiving and utilizing the E911 information is “valid.” *Id.* Thus, so long as such a PSAP commits in its request to the carrier that it will have the necessary equipment upgrades finalized by the time that the carrier delivers the service, the carrier should then be obligated to take the steps necessary to deliver the service to the PSAP. In this way, both the carrier and the PSAP would be working simultaneously to ensure that Phase II service is initiated as quickly as possible, thereby accomplishing the Commission’s laudable goals of “speed(ing) actual implementation of E911” and bringing “(t)he substantial benefits of wireless E911 to the public interest and safety...without undue delay. Third Report and Order, 14 FCC Rcd 17388, 17392 (1999).

Nothing in the Commission’s orders in the E911 proceeding suggests that it is in the public interest to permit a wireless carrier to do nothing until a PSAP finishes its equipment upgrade, especially where the PSAP has told a carrier that it has a cost recovery mechanism in place and that it will finalize the upgrades by the time the carrier delivers the service. The whole idea behind the Commission’s orders has been to speed the deployment of Phase II service. When a PSAP gives notice to a carrier that it will be making the upgrades and that it has the cost recovery mechanism to fund the upgrades, there is no good reason to permit the carrier to sit back and do nothing.

The existence of the cost recovery mechanism ensures that the request is valid, as the Commission noted in the Second MO&O. A PSAP would have no interest or reason to ask for the Phase II service if it was not intending to accomplish the equipment upgrades. Allowing a carrier such as VoiceStream to wait for a PSAP to complete the equipment upgrades before the carrier has to begin taking the steps to deliver Phase II service will only delay the initiation of Phase II service and for no good reason. Instead, the carrier can and should be working on the delivery of Phase II service at the same time that the PSAP is completing the upgrades of its equipment.

Indeed, Richardson’s request said that it was aware of the October 1, 2001 deadline for the initiation of Phase II service. Exhibit “A.” Thus, Richardson was, in effect if not expressly,

telling VoiceStream that Richardson would have the equipment upgrades finalized by October 1, 2001, and with the clarification requested herein, VoiceStream would be obligated to provide such service at that time. On the other hand, under VoiceStream's interpretation, Richardson could not even make a valid request until the upgrades were finalized (that is, by October 1, 2001), and then VoiceStream would have six months to deliver the service. This delay serves no valid public purpose, and in fact, the public will suffer harm for no good reason as a result of such a delay.

Richardson is, therefore, seeking clarification and/or a declaratory ruling so that this unfortunate problem is cleared up once and for all, both for its residents and for residents of communities elsewhere with PSAPs who may be the victim of the same type of dilatory tactics by wireless carriers, so that Phase II service will not be unnecessarily delayed.

IV. Conclusion

Wherefore, the City of Richardson respectfully requests clarification and/or a declaratory ruling that a PSAP makes a valid request to a wireless carrier for Phase II service by informing the carrier that its equipment upgrades for Phase II service will be finalized prior to delivery of the service by the carrier and that it has an adequate cost recovery mechanism in place to bring its equipment to the level necessary to receive Phase II data, and that the carrier is required to deliver Phase II service within six months after receiving such a request or by October 1, 2001, whichever is later, so that the service is available to the PSAP when its equipment upgrades are completed.

Respectfully submitted,

NICHOLS, JACKSON, DILLARD,
HAGER & SMITH, L.L.P.

By: _____

Jason C. Marshall

Bar Card No. 00794231

Peter G. Smith

Bar Card No. 18664300

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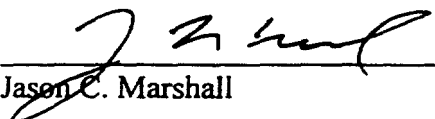
CERTIFICATE OF SERVICE

This is to certify that on this the 29 day of March, 2001, a true and correct copy of the foregoing document was served by depositing same in the U.S. Mail, Postage Prepaid, Certified Mail Return Receipt Requested to the following persons:

Thomas Sugrue, Esq.
Chief
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Brian T. O'Connor
Robert A. Calaff
VoiceStream Wireless
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20004



Jason C. Marshall

March 20, 2000

Jim Blundell
VoiceStream Wireless
Regulatory Department
3650 131st Avenue SE, Suite 400
Bellevue, Washington 98006

Mr. Blundell:

On behalf of the City of Richardson, Texas, I am hereby requesting the provisioning of Phase I enhanced 9-1-1 services for wireless customers using VoiceStream Wireless services. Additionally, the City of Richardson is also making a formal request for Phase II services. In accordance with the provisions of FCC Docket 94-102, it is expected that the City's request for Phase I services will be completed in no more than a six-month period from the date of this request. The City of Richardson is aware of the October 1, 2001 deadline for the provisioning of Phase II services.

In accordance with provisions of Docket 94-102, the City of Richardson has taken steps ensure that our customer premise equipment is capable of receiving data in accordance with Phase I requirements. The City of Richardson further advises that it has an adequate cost recovery mechanism in place to bring our customer premise equipment to the level necessary to receive Phase II data. The City of Richardson's Phase II customer premise equipment upgrades will be finalized prior to the delivery of this service by VoiceStream Wireless.

Thank you in advance for your assistance in this matter.

Sincerely,

Joe Hanna, Captain
Communications Division
Richardson Police Department
City of Richardson, Texas

EXHIBIT

The logo for VoiceStream, featuring the word "VoiceStream" in a stylized, italicized font. The "V" is large and prominent, with the "oiceStream" part following it. The logo is set against a dark, textured circular background.

April 18, 2000

Joe Hanna, Captain
Communications Division
Richardson Police Department
140 N. Greenville Avenue
Richardson, TX 75081-6006

Re: Phase II Request

Dear Joe,

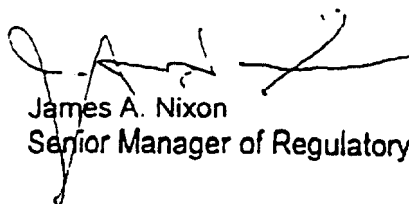
My reply to your March 20, 2000, letter did not address the Phase II portion of your request because we were reviewing the issues. Although we are committed to working with PSAPs to implement FCC 94-102 we also have a responsibility to protect our investors' interests. Towards this end, we need to carefully validate wireless E9-1-1 requests before accepting them and establishing any service delivery deadlines.

It appears that the Phase II portion of your request does not satisfy the FCC prerequisites. Specifically, the second paragraph reads, in part, "The City of Richardson further advises that it has an adequate cost recovery mechanism in place to bring our customer premise equipment to the level necessary to receive Phase II data." This language indicates to us that the equipment is not currently capable of receiving and using the Phase II data. If this is the case we do not believe a valid Phase II request can be made at this time. Please let us know if this interpretation is inaccurate.

Even lacking a formal request we would be happy to work with you to address the many details involved in providing Phase II service. Please let me know how we can help prepare for a smooth implementation.

Should you have any questions please contact me so we can discuss the issues. Thank you in advance for your prompt reply.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Nixon". The signature is fluid and cursive, with a long horizontal stroke at the end.

James A. Nixon
Senior Manager of Regulatory Affairs



April 8, 2000

James A. Nixon, Senior Manager of Regulatory Affairs
VoiceStream Wireless
3650 131st Avenue, SE, Suite 200
Bellevue, Washington 98006

Dear Jim:

I would like to thank you for your letter of April 3, 2000 acknowledging receipt of the City of Richardson's request for Phase I enhanced wireless 9-1-1 services. I look forward to working with you and your staff as we move to the implementation portion of this request. As you will note in my original letter, however, the City of Richardson has also formally requested Phase II services from VoiceStream. Your letter of April 3, 2000 failed to acknowledge this request. I am not sure whether this was an oversight or whether there is an issue with this request.

Congratulations on your move to VoiceStream. I hope your move to Seattle went well and that you are enjoying the new scenery. As an additional FYI, the APCO Wireless Symposium conducted in Denver this past week was a sellout and the feedback was outstanding. I hope we were able to generate some business for you and VoiceStream.

As always, please do not hesitate to contact me to discuss any of the details of our pending requests for Phase I and Phase II enhanced wireless 9-1-1 service.

Sincerely,

Joe Hanna, Captain
Communications Division
Richardson Police Department



POLICE

EXHIBIT